

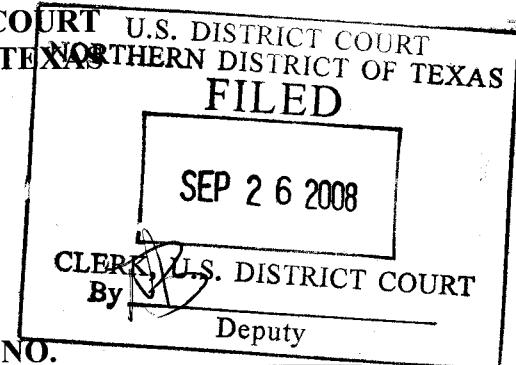
**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**GEORGE BATTLE JR., GEORGE
BATTLE III AND DOLLY BATTLE
Plaintiffs,**

vs.

**CITY OF GRAND PRAIRIE
Defendant.**

CAUSE NO.



3-08CV1709-K

25408

NOTICE OF REMOVAL OF ACTION

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendant City of Grand Prairie (“City”) removes to
this Court the state court action described below:

1. Originally, Plaintiffs filed this action in the 44th Judicial District Court of Dallas County, Texas (hereinafter referred to as the “State Court”), styled *George Battle Jr., George Battle III, and Dolly Battle v. City of Grand Prairie*, Cause No. 08-09918, as more fully described in Plaintiff’s 42 USC Section 1983 Claim For Wrongful Taking of Personal and Real Property, Without Due Process of Law, and Without Just Compensation (hereinafter referred to as “Plaintiffs’ Petition”).
2. Defendant City of Grand Prairie was served with the lawsuit on August 27, 2008, and timely filed its answer in the State Court on or about September 8, 2008, denying Plaintiffs’ allegations.
3. Defendant City of Grand Prairie files this notice of removal within the 30-day time period required by 28 U.S.C. §1446(b).

4. Said cause is currently pending in the 44th Judicial District Court of Dallas County, Texas.
5. Pursuant to Local Rule 81.1, a certified copy of the State District Court Docket Sheet and each document filed in the State Court action, except discovery material, individually tabbed and arranged in chronological order according to the State Court file date are attached hereto as Exhibit "A" and incorporated herein.
5. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331 and is one which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441(b) in that it arises under a constitutional question and a statutory avenue for such constitutional claims, in that Plaintiffs have attempted to state a claim under 42 U.S.C. § 1983.
6. Contemporaneous with the filing of this Notice of Removal, Defendant City of Grand Prairie has given the 44th Judicial District Court of Dallas County, Texas written notice of this removal.
7. Venue is proper in this district under 28 U.S.C. §1441(a) because this district and division embrace the place where the removed action has been pending.
8. Defendant City of Grand Prairie provides the following additional information regarding counsel of record:

W. Dean Cook
Cook and Cook Law Offices
740 E. Campbell Road, Suite 900
Richardson, Texas 75081
(214) 336-7440
Attorney for Plaintiffs

Gerald Bright (Attorney-in-charge)
David Craft
Walker Bright, PC

5910 N. Central Expressway, Suite 980

Dallas, Texas 75206

(214) 692-6530

Attorneys for Defendant City of Grand Prairie

WHEREFORE, PREMISES CONSIDERED, Defendant City of Grand Prairie respectfully requests that this action be removed to this Court, and pray for such other and further relief as Defendant may show itself justly entitled.

Respectfully submitted,

WALKER BRIGHT, PC

5910 N. Central Expressway, Suite 980

~~Dallas, Texas 75206~~

Telephone : (214) 692-6530

Facsimile : (214) 692-7821

Gerald Bright

State Bar No. 02991720 ✓

David L. Craft

State Bar No. 00790522 ✓

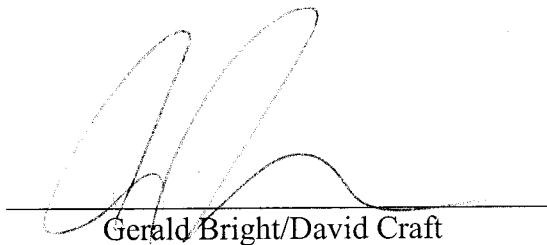
Attorneys for the Defendant City of Grand Prairie

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Removal has been sent to opposing counsel and/or the persons listed below by certified mail, return receipt requested and/or regular First Class U.S. Mail, as reflected below, on this the 26th day of September, 2008.

W. Dean Cook
Cook and Cook Law Offices
740 E. Campbell Road, Suite 900
Richardson, Texas 75081
Attorney for Plaintiffs

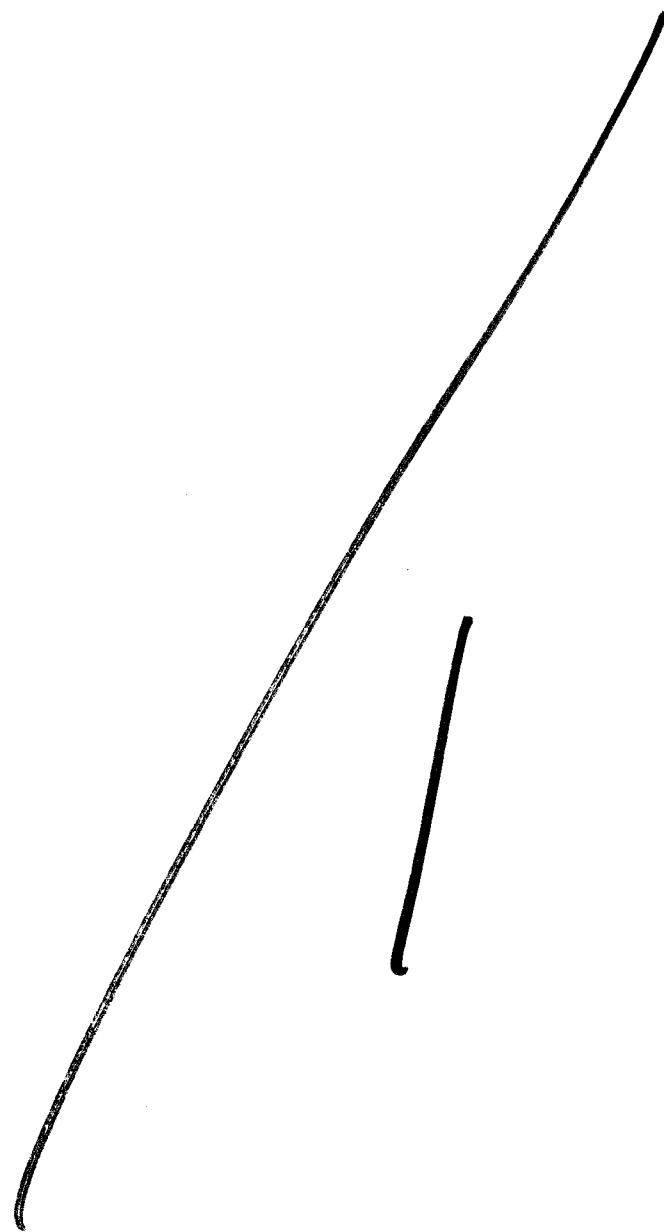
VIA CMRRR # 7007 2560 0002 7943 5322



Gerald Bright/David Craft

TABLE OF CONTENTS

Document	Filing Date
1. Certified Copy of the Case Summary	
2. Certified Copy of Judge's Docket Sheet	
3. Certified Copy of Dallas County Civil District Court Cover Sheet	
4. Plaintiff's Original Petition for Injunction and for Declaratory Judgment	8/22/2008
5. Temporary Restraining Order	8/22/2008
6. Citation for the City of Grand Prairie	8/29/2008
7. Correspondence to the Court regarding the Defendant City of Grand Prairie's Original Answer	9/22/2008
8. Defendant City of Grand Prairie's Original Answer	9/22/2008



CASE SUMMARY

CASE NO. DC-08-09918

**GEORGE BATTLE, Jr., et al
vs.
CITY OF GRAND PRAIRIE**

200

Location: **44th District Court**
Judicial Officer: **CORTEZ, CARLOS**
Filed on: **08/22/2008**

CASE INFORMATION

Case Type: **OTHER (CIVIL)**
Sub Type: **INJUNCTION**

PARTY INFORMATION

PLAINTIFF	BATTLE, DOLLY	2
		-
	COOK, WOODY DEAN	3
		-
		7
	<i>Retained</i>	
BATTLE, GEORGE, III		2
		-
	COOK, WOODY DEAN	3
		-
		7
	<i>Retained</i>	
BATTLE, GEORGE, Jr.		2
		-
	COOK, WOODY DEAN	3
		-
		7
	<i>Retained</i>	
DEFENDANT	CITY OF GRAND PRAIRIE	2
		-
	BRIGHT, GERALD	6
		-
		6
	<i>Retained</i>	

CASE SUMMARY**CASE NO. DC-08-09918**
FINANCIAL INFORMATION

DATE

PLAINTIFF BATTLE, GEORGE, Jr.	
Total Charges	246.00
Total Payments and Credits	250.00
Balance Due as of 9/25/2008	(4.00)
08/22/2008 Charge	PLAINTIFF BATTLE, GEORGE, Jr. 222.00
08/22/2008 Charge	PLAINTIFF BATTLE, GEORGE, Jr. 24.00
08/22/2008 PAYMENT Receipt # 51499-2008-DCLK (CASE FEES)	PLAINTIFF BATTLE, GEORGE, Jr. (250.00)

2

JUDICIAL DISTRICT
COURT OF DALLAS COUNTY, TEXAS

CAUSE OF ACTION

INJUNCTION

DC-08-09918

Filed: 08/22/2008

OTHER (CIVIL)	44th District Court
GEORGE BATTLE, Jr. vs. CITY OF GRAND PRAIRIE	
Plaintiff BATTLE, GEORGE, Jr.	Lead Attorney COOK, WOODY DEAN
Defendant CITY OF GRAND PR	Lead Attorney



FILE DATE 08-22-08

BOND APPROVAL

COST DEPOSIT \$ 250

JURY

DATE _____ INITIAL PROCESS ISSUED _____

INITIAL PROCESS ISSUE

CONSOLIDATED WITH

TRANSFERRED FROM

**CONSOLIDATED
SEVERED FROM**

DATE

DATE FILED	PLEADINGS/ORDERS/PROCESS ISSUED	BOOK/PAGE
8/22/08	Ct. Alter	
8-22-08	DIYRD - Denied	406B327
8-29-08	Ref ct-City of Grand Prairie 8/27	
9-22-08	D/lng Ans-City of Grand Prairie	

THESE ARE DISTRICT COURT PAPERS AND MUST NOT BE REMOVED FROM THE DISTRICT CLERK'S OFFICE

Gary Fitzsimmons, District Clerk, Dallas County

MEMORANDUM OF PAPERS FILED CONTINUED

3



DALLAS COUNTY CIVIL DISTRICT COURT COVER SHEET

STYLED

v. City of Duluth AUG 22 1968

This Civil Cover Sheet must be completed, filed and served with every petition. The information should be the best available at the time of filing, understanding that the information may change before trial. This information does not constitute a discovery request. 11/11/20
DALLAS CO DISTRICT CLERK SIMMONS

Plaintiff(s) <input checked="" type="checkbox"/> Pro Se Address _____	Defendant(s) (list separately) City of Grand Prairie
Telephone/Fax _____ E-mail _____	
<input checked="" type="checkbox"/> Attorney for Plaintiff(s) State Bar No. 24036393 Address Cook & Co-K, 740 E. Campbell Rd. #900 Richardson, TX 75081 Telephone/Fax 214-336-7440 972-767-3920 E-mail Koocy@yahoo.com	<small>TEXAS DEPUTY</small>

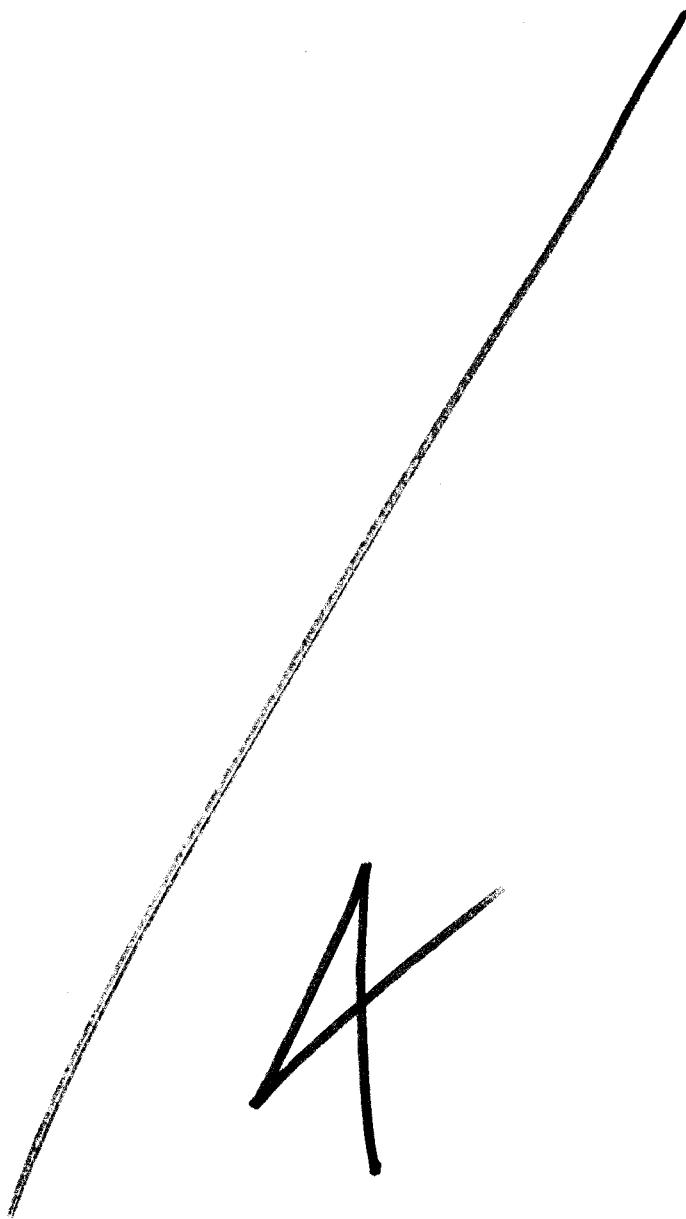
PARTIES **MUST** CHECK ONE CASE TYPE AND MAY CHECK ONE SUB-TOPIC

- Administrative Appeal
- Bill of Review
- Certiorari
- Code Violations
- Condemnation
- Construction
- Construction
- Debt/Contract
- Defamation
- Other Commercial Dispute
 - Antitrust/Unfair Comp
 - Consumer/DTPA
 - Franchise
 - Fraud/Misrep
 - Intellectual Property
 - Non-Competes
 - Partnership
 - Securities/Stock
 - Tortious Interference
 - Other Commercial
- Discipline
- Discovery
 - Rule 202 Depositions
 - Commissions
 - Subpoena
 - Letters Rogatory
 - Other Discovery
- Employment
 - Discrimination
 - Retaliation
- Foreclosure
 - R 736
 - Other than R 736
- Foreign Judgment
- Insurance
- Mass Tort/MDL/Rule 11
 - Asbestos
 - Baycol
 - Breast Implant
 - Firestone
 - Phen-Fen
 - Silica
 - Other Multi-Party
- Motor Vehicle Accident
 - Other Personal Injury
 - Assault/Battery
 - Product
 - Premises
 - Other Personal Injury
- Name Change
- Post-Judgment
- Professional Liability
 - Accounting
 - Legal
 - Med/Mal
 - Other Prof. Liab.
- Property
- Partition
- Quite Title
- Trespass/Try Title
- Other Property
- Prejudgment Remedy
- Seizure/Forfeiture
- Tax
 - Tax Appraisal
 - Tax Delinquency
 - Tax Land Bank
 - Tax Personal
 - Tax Real
- Workers Comp
- Other - *Case 54717-2011*

ADDITIONAL SUB-TOPICS

- Attachment
- Bill of Discovery
- Class Action
- Declaratory Judgment
- Garnishment
- Interpleader
- License
- Mandamus
- Receiver
- Sequestration
- Severance
- TRO/Injunction
- Turnover

DISCOVERY LEVEL	<input checked="" type="checkbox"/> Level 1	<input type="checkbox"/> Level 2	<input type="checkbox"/> Level 3
Local Rule 1.08 Certification (Must be completed and signed)			
<p>This case is not subject to transfer pursuant to Local Rule 1.07 or</p> <p>This case is related to another case filed or disposed of in Dallas County:</p> <p>Court: _____ Style: _____</p>			
<p>Case No. _____</p>  <p>Attorney's Signature</p>			



FILED

NO. 08-09918
AUG 22 2008
GEORGE BATTLE JR.,
GEORGE BATTLE III,
And DOLLY BATTLE

v.

CITY OF GRAND PRAIRIE

§ IN THE DISTRICT COURT
DALEAS COUNTY, TEXAS
CLERK, DALLAS CO., TEXAS
B-44th JUDICIAL
DISTRICT

PLAINTIFF'S ORIGINAL PETITION FOR INJUNCTION AND FOR DECLARATORY JUDGMENT

TO THE HONORABLE COURT:

George Battle, Jr., George Battle III, and Dolly Battle, the plaintiffs, complain of City of Grand Prairie, Defendant, and for cause of action shows:

1. Selection of Discovery Level

The plaintiffs affirmatively plead that discovery should be conducted in accordance with a discovery control plan under Civil Procedure Rule 190.2.

2. Parties and Service of Citation

The plaintiffs are individuals residing in Texas. The defendant is a municipality, residing in Texas, and may be served with citation at 317 W College St. Grand Prairie, Texas 75050 (Grand Prairie City Attorney's Office). 1-CIT

3. Relationship of Parties

George Battle Jr. and Dolly Battle are individuals residing at 3654 Forest Trail, Grand Prairie, Texas 75052. George Battle III is their son, who also claims ownership of the dog "Java". ATTY

The Battles have been in conflict for some time with the City of Grand Prairie over various dogs that have been at their property, and have been owned by them or their family members. The current request for Injunction arises out of an order (see attached) to destroy the dog "Java", which is to be carried out within 48 hours of 2:00pm on August 20, 2008 (i.e., the dog is ordered to be destroyed on August 22, 2008, at 2:00pm.) The dog has been ordered destroyed as a "violation of

unabated nuisance order”, which was issued by the Municipal Court, after a hearing that was held on August 20, 2008, after the Battles were given notice of the hearing in a letter dated 8-14-08, which, according to its post-mark, was not mailed until August 15, 2008. The letter noticing the Battles of the hearing was also not received by the Battle’s attorney until Monday, August 18, 2008, giving them less than 2 days to prepare for the hearing.

The actions of the city have effectively meant that the Battle’s have been forbidden by the City of Grand Prairie from owning any dogs on their 3654 Forest Trail, Grand Prairie, Texas 75052 property in perpetuity, despite the fact that there is no general law prohibiting the ownership of dogs by the residents of that city. The actions of the city have further violated Plaintiff’s right to the use and enjoyment of the dog “Java”, without due process of law and without just compensation.

4. Defendant's Breach

The defendant has threatened irreparable harm to the plaintiff’s property rights by taking the dog “Java” without due process of law, and without just compensation. Specifically, the actions of the City of Grand Prairie violate the United States Constitution, the Constitution of the State of Texas, and federal law including:

- 1) 42 USC §1983 “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”
- 2) Article I, Section 19, Texas State Constitution: “No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land”
- 3) Article I, Section 17, Texas State Constitution: “No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.”

- 4) Amendment IVX, United States Constitution: "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...."
- 5) Amendment V, United States Constitution: "No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Made Applicable against the States via Amendment IVX of the US Constitution.)

The defendant's conduct is wrongful because it has effectively taken the Plaintiff's real property at 3654 Forest Trail, Grand Prairie, Texas 75052 without due process and without just compensation by forbidding the possession of any dogs on that real property. The defendant's conduct is further wrongful by taking Plaintiff's dog, "Java", without due process of law, and without just compensation.

5. Plaintiff's Injuries and Damages

The plaintiffs have and will continue to be damaged and injured by the defendant's conduct by the loss of use and enjoyment of their real property at 3654 Forest Trail, Grand Prairie, Texas 75052 and by the loss of the use and enjoyment of their personal property, the dog "Java", who is scheduled to be euthanized on Friday, August 22, 2008 at 2:00pm.

6. Preliminary and Permanent Injunctive Relief

a. The plaintiffs require injunctive relief to prevent the defendant from depriving them of the use and enjoyment of their private property at 3654 Forest Trail, Grand Prairie, Texas 75052, so that they may own dogs on that property. The plaintiffs also require injunctive relief to prevent the defendant from depriving them of the use and enjoyment of the dog "Java", which is personal property, who is scheduled to be destroyed on Friday, August 22, 2008 at 2:00pm.

b. The plaintiff has alleged a cause of action against the defendant, and as indicated in this petition, verified by the affidavit of George Battle Jr., George Battle III, and Dolly Battle

which is attached hereto and incorporated by reference, the plaintiff has shown a probable right of recovery and likelihood of success on the merits, the plaintiff will suffer imminent, irreparable harm without Court intervention, and there is no adequate remedy at law.

c. As a direct and proximate result of the defendant's wrongful actions as alleged in this petition, the plaintiff has suffered and will continue to suffer imminent injury that will be irreparable and for which no remedy at law exists without the protections of a temporary restraining order and injunctive relief. The plaintiff is willing to post the necessary reasonable bond to facilitate the injunctive relief requested. Plaintiffs further request that the bond on the temporary restraining order be set in the amount of less than \$200.00 (two hundred dollars), because prohibiting the city of Grand Prairie from euthanizing the dog "Java" for no more than 14 days will have a minimal cost impact on the City of Grand Prairie. (The only extra cost to the defendant City would be dog food and animal shelter space.)

d. The only adequate, effective, and complete relief to the plaintiff is to restrain the defendant from further engaging in certain proscribed activities, as set forth below. Pursuant to Tex. R. Civ. P. § 680 et seq. and Tex. Civ. Prac. & Rem. Code § 65.001 et seq., and in order to preserve the status quo during the pendency of this action, the plaintiff seeks a temporary restraining order, and upon hearing, a temporary and permanent injunction, ordering and immediately restraining the defendant, including the defendant's agents, servants, employees, independent contractors, attorneys, representatives, and those persons or entities in active concert or participation with them (collectively, the "Restrained Parties") as follows:

- (1) Enjoining the defendant from destroying the dog "Java", currently held by defendant or defendant's employees and agents.
- (2) Enjoining the defendant from depriving the Plaintiffs of their right to keep dogs on their property at 3654 Forest Trail, Grand Prairie, Texas 75052, unless such dog(s) are found, each individually and separately, after due process of law, to be in violation of, a constitutionally valid, statute or ordinance.

(3) Enjoining the defendant to return the dog "Java" to Plaintiffs unharmed and alive.

7. Request for Declaratory Judgment

Plaintiffs further request that this court enter a declaratory judgment pursuant to the Declaratory Judgments Act, Chapter 37 of the Civil Practice and Remedies Code of Texas:

- (1) Plaintiffs request that this court declare that the taking of the dog "Java" by the City of Grand Prairie violated the Texas Constitution and the Constitution of the United States.
- (2) Plaintiffs further request that this court declare that their property at 3654 Forest Trail, Grand Prairie, Texas 75052 has been taken by the City of Grand Prairie in violation of the Texas Constitution and the Constitution of the United States.
- (3) Plaintiffs further request that this court declare that the Magistrate's Special Conditions Order, Case No. A068793, Grand Prairie Municipal Court, dated 8-20-08, is void because it was issued in violation of the Texas Constitution and the Constitution of the United States.
- (4) Plaintiffs further request that this court declare that Code of Ordinances, Grand Prairie, Texas, Chapter 5 "Animals and Fowl", Article VI "Miscellaneous", Sec. 5-59 "Nuisances", be declared in violation of the Texas Constitution and the Constitution of the United States, both facially and as applied.

WHEREFORE, the plaintiff respectfully prays for the following relief:

1. A temporary restraining order, and upon hearing, a preliminary injunction for the relief requested above;
2. Declaratory relief as requested above;
3. Upon final trial, judgment against the defendant for full permanent injunctive relief, and for the full amount of the plaintiff's actual damages, as found by the trier of fact as a consequence of the defendant's conduct;
4. Prejudgment interest as provided by law;

5. Postjudgment interest as provided by law;
6. The plaintiff's reasonable and necessary attorneys' fees in prosecuting its claim(s) through trial and, if necessary, through appeal;
7. All costs of suit; and
8. Such other and further relief, at law or in equity, to which the plaintiff may show itself justly entitled.



W. Dean Cook
W. Dean Cook
Texas Bar No. 24036393
214-336-7440 (phone)
972-767-3920 (fax)
Attorney for Plaintiffs

Mailing Address:
Cook and Cook Law Offices
740 E. Campbell Road, Suite 900
Richardson, Texas 75081
(Attn: Dean Cook)

DALLAS COUNTY LOCAL RULE 2.02(c) CERTIFICATION

I certify that the Plaintiff's application for Temporary Restraining Order presented in this case is not subject to transfer under Local Rule 1.06.



W. Dean Cook
Texas Bar No. 24036393
214-336-7440 (phone)
972-767-3920 (fax)
Attorney for Plaintiffs

Mailing Address:
Cook and Cook Law Offices
740 E. Campbell Road, Suite 900
Richardson, Texas 75081
(Attn: Dean Cook)

VERIFICATION

STATE OF TEXAS

COUNTY OF DALLAS

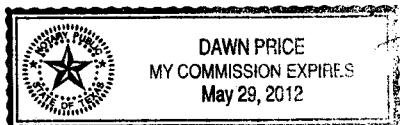
Before me, the undersigned Notary Public, on this day personally appeared

Dawn Battle, who, after being duly sworn, stated under oath that

she is the plaintiff in this action; that he has read the above petition; and that every statement contained in the petition is within her personal knowledge and is true and correct.

Dawn Battle

SUBSCRIBED AND SWORN TO BEFORE ME on 8-21-08,
2008, to certify which witness my hand and official seal.



Notary Public in and for
the State of Texas

VERIFICATION

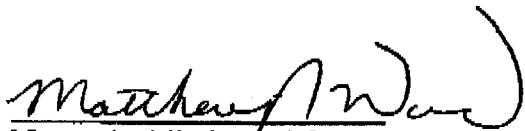
STATE OF TEXAS
COUNTY OF DALLAS

Before me, the undersigned Notary Public, on this day personally appeared GEORGE BATTLE, III, who, after being duly sworn, stated under oath that he is the plaintiff in this action; that he has read the above petition; and that every statement contained in the petition is within his personal knowledge and is true and correct.



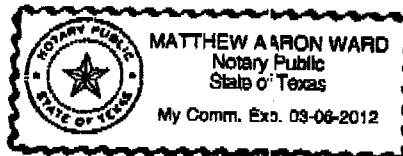
GEORGE BATTLE, III

SUBSCRIBED AND SWORN TO BEFORE ME on 21, August,
2008, to certify which witness my hand and official seal.



Matthew Aaron Ward

Notary Public in and for
the State of Texas



VERIFICATION

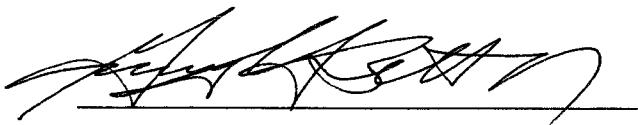
STATE OF TEXAS)

COUNTY OF DALLAS)

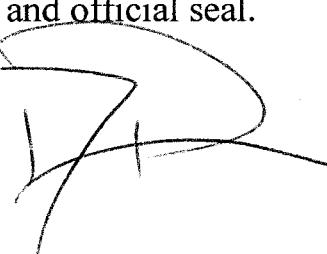
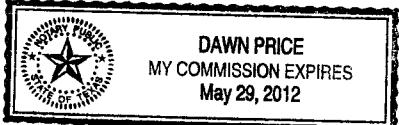
Before me, the undersigned Notary Public, on this day personally appeared

George L. Battle Jr., who, after being duly sworn, stated under oath that

he is the plaintiff in this action; that he has read the above petition; and that every statement contained in the petition is within his personal knowledge and is true and correct.



SUBSCRIBED AND SWORN TO BEFORE ME on 8-21-08,
2008, to certify which witness my hand and official seal.



Notary Public in and for
the State of Texas



Case No. A068793

MAGISTRATE'S SPECIAL CONDITIONS ORDER

THE STATE OF TEXAS § IN THE MUNICIPAL COURT
VS. § OF
BATTLE, GEORGE § GRAND PRAIRIE, TEXAS

VIOLATION OF UNABATED NUISANCE ORDER

The Grand Prairie Municipal Court, in accordance with City Ordinance Section 5-59, hereby declares the animal(s) owned by GEORGE BATTLE and described below to be a continuing public nuisance. Being declared that such public nuisance exists unabated, the court declares the following action to be carried out within the guidelines of the Grand Prairie City Ordinance. Failure to complete this order constitutes contempt of court punishable by fine from \$1 - \$500 and/or incarceration in the city jail for three (3) days.

Description of animal(s): Adult Male Tan/White Pit Bull – “Java”

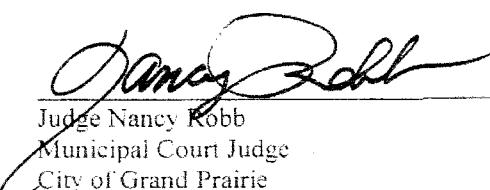
Action to be taken:



Based on the fact that the animal was voluntarily surrendered by the owner, Mr. George Battle on the 26th day of July, 2008, the animal is in custody of Grand Prairie Animal Services and ordered to be humanely destroyed within 48 hours at 2:00 p.m. from the date of this order per the guidelines of the Grand Prairie City Ordinance.

August 20, 2008

Date


Judge Nancy Robb
Municipal Court Judge
City of Grand Prairie

C:\office\forms\animal.htm

5

NO. 08-09918

GEORGE BATTLE JR., § IN THE DISTRICT COURT
 GEORGE BATTLE III, § DALLAS COUNTY, TEXAS
 And DOLLY BATTLE § **B-44th** JUDICIAL DISTRICT
 v. §
 CITY OF GRAND PRAIRIE §

TEMPORARY RESTRAINING ORDER

GEORGE BATTLE JR., GEORGE BATTLE III, AND DOLLY BATTLE, plaintiffs in this cause, have filed a verified petition for a temporary injunction and, in connection therewith, have presented a request for a temporary restraining order, as set forth in their petition. This temporary restraining order concerns the dog "Java", currently in custody of the City of Grand Prairie, who was the subject of a Municipal Court Order, dated August 20, 2008, (Case No. A068793). It clearly appears from the facts set forth in their verified petition and affidavits that unless The City of Grand Prairie, defendant, is immediately restrained from euthanizing the dog "Java", it will commit the foregoing act before notice can be given and a hearing is had on plaintiff's motion for a temporary injunction; and that if the commission of this act is not restrained immediately, plaintiffs will suffer irreparable injury because the dog "Java" is currently scheduled to be euthanized by the City of Grand Prairie on Friday, August 22, 2008, at 2:00pm.

*he
ity
appeared through its atty D. Poston at a hearing conducted on
IT IS THEREFORE ORDERED that the City of Grand Prairie, defendant in this cause, as well as its employees and agents, be, and hereby is, commanded forthwith to desist and refrain from euthanizing the dog "Java" from the date of entry of this order until and to the fourteenth day after entry or until further order of this Court.*

IT IS FURTHER ORDERED the petition of GEORGE BATTLE JR., GEORGE BATTLE III, AND DOLLY BATTLE, Plaintiffs, for temporary injunction be heard TGS

before _____ (Judge)

on _____, 2008, at _____ o'clock, in the courtroom of

the _____ District Court in

the _____ building in Dallas County, Texas.

The clerk of the above-entitled Court shall forthwith, on the filing by plaintiff of the bond hereinafter required, and on approving the same according to the law, issue a temporary restraining order in conformity with the law and the terms of this order.

This order shall not be effective unless and until plaintiff executes and files with the clerk a

bond, in conformity with the law, in the amount of

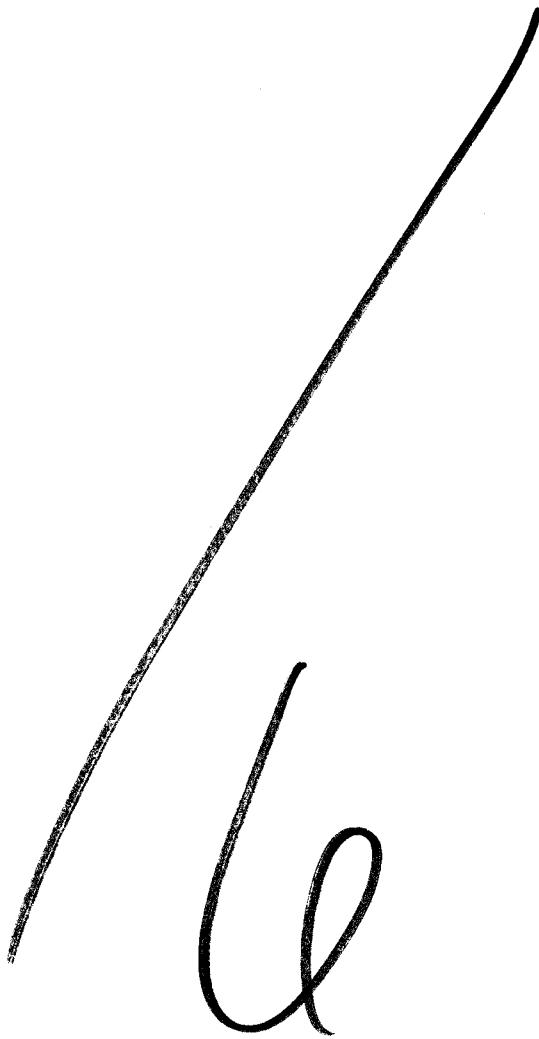
(Based on the information filed in support of the requested relief. The Temporary restraining order is denied.)

JUDGE PRESIDING
Teresa Guerra Snelson

Associate Judge

Sitting for the

44th Civil District Court



A handwritten signature in black ink, appearing to read "John Doe". The signature is fluid and cursive, with a long, sweeping stroke extending from the bottom left towards the top right, followed by a more compact, looped flourish.

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS****FILED****ATTY****To:**

CITY OF GRAND PRAIRIE
GRAND PRAIRIE CITY ATTORNEYS OFFICE
317 W COLLEGE ST
GRAND PRAIRIE TX 75050

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and PLAINTIFF'S ORIGINAL PETITION FOR INJUNCTION AND FOR DECLARATORY JUDGMENT, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 44th District Court at 600 Commerce Street, Dallas, Texas 75202.

Said Plaintiff being GEORGE BATTLE, Jr., ETAL

Filed in said Court on this the 22nd day of August, 2008 against

CITY OF GRAND PRAIRIE

For suit, said suit being numbered DC-08-09918, the nature of which demand is as follows:
Suit On OTHER (CIVIL) etc. as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.

Given under my name and the Seal of said Court at office on this 22nd day of August, 2008

ATTEST: GARY FITZSIMMONS

Clerk of the District Courts of Dallas, County Texas

By RITA RODGERS, Deputy

214-336-7440

No.: DC-08-09918

GEORGE BATTLE, Jr., ETAL
vs.
CITY OF GRAND PRAIRIE

ISSUED

on this the 22nd day of August, 2008

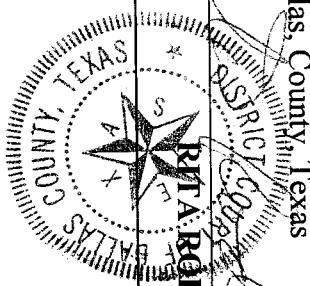
GARY FITZSIMMONS
Clerk District Courts,
Dallas County, Texas

By RITA RODGERS, Deputy

Attorney for Plaintiff

WOODY DEAN COOK
740 E CAMPBELL ROAD
SUITE 900
RICHARDSON TX 75081

DALLAS COUNTY CONSTABLE
FEES NOT PAID



GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

200 AUG 29 PM 3:20

OFFICER'S RETURN

Came to hand on the 26 day of August, 2008, at 3:45 o'clock P..M. Executed
317 W. Commerce STREET APT #100 DALLAS, TX 75201, within the County of Dallas at 1:15 o'clock
P. M. on the 27 day of August, 2008, by delivering to the within
 named

City of Dallas Police, By Deuterius Deostee, City Attorney

Page 30

On, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery.
 The distance actually traveled by me in serving such process was miles and expenses are as follows:

To certify which witness my hand.

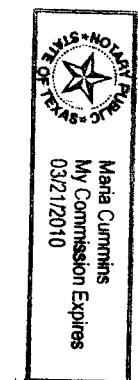
AND CIVIL PROCESS

3301 IBJ FREEWAY, SUITE 900
 PALLAS, TEXAS 75243

For serving Citation	\$ <u>75.00</u>
For mileage	\$ <u> </u>
For Notary	\$ <u> </u>

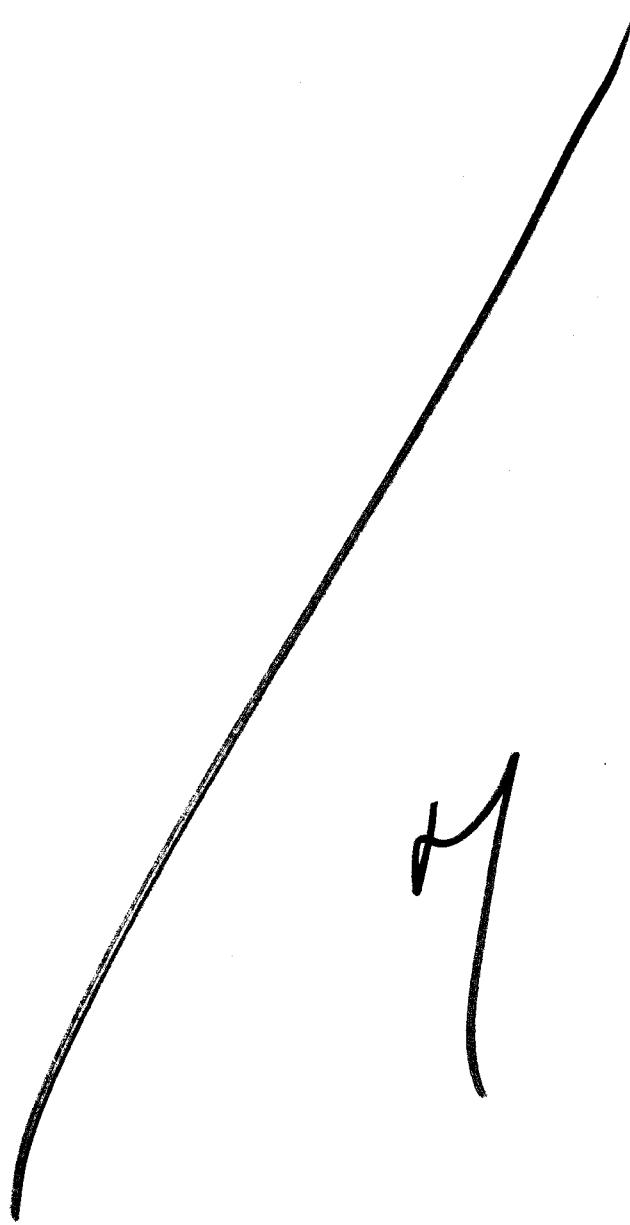
By Shane J. Davis, Sheriff's Deputy, Sheriff's Office
 (Must be verified if served outside the State of Texas.)

Signed and sworn to by the said SHANE J. DAVIS before me this 27 day of August, 2008,
 to certify which witness my hand and seal of office.



Maria Cummins
 My Commission Expires
 03/21/2010

Maria Cummins
 Notary Public Cook County Texas



WALKER BRIGHT PC

ATTORNEYS AT LAW

Premier Place
5910 North Central Expressway, Ste. 980
Dallas, Texas 75206
Telephone: (214) 692-6530
Facsimile: (214) 692-7821

FILED
08 SEP 22 PM 1:30
GARY FISCHER SIMMONS
DISTRICT CLERK
DALLAS COUNTY TEXAS
DEPUTY

September 19, 2008

44th District Court
George L. Allen, Sr. Courts Bldg.
600 Commerce St., Box 540
Dallas, Texas 75202

Re: George Battle Jr., George Battle III and Dolly Battle vs. City of Grand Prairie, Texas; In the 44th Judicial District Court, Dallas County Texas, Case No. 08-09918

Dear Clerk:

In connection with the above referenced matter, enclosed for filing please find an original and two (2) copies of Defendant City of Grand Prairie's Original Answer.

Once filed, please return the file-marked copies of the document to the undersigned in the postage paid envelope provided. A copy of this document has this day been forwarded to counsel for the opposing party.

Thank you for your assistance and please do not hesitate to contact me should you have any questions.

Sincerely,

WALKER BRIGHT PC



David Craft

DC/jer
Enclosures

cc: W. Dean Cook
Cook & Cook Law Offices
740 E. Campbell Road, Suite 900
Richardson, Texas 75081

Via CMRRR # 7006 2760 0005 5000 4833

8

FILED

CAUSE NO. 08-09918

08 SEP 22 PM 1:30
IN THE DISTRICT COURT OF

GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO. TEXAS

Gary Fitzsimmons

GEORGE BATTLE, JR.
GEORGE BATTLE, III
And DOLLY BATTLE

PLAINTIFF,

VS.

THE CITY OF GRAND PRAIRIE

DEFENDANT.

§ 44th JUDICIAL DISTRICT

§ DALLAS COUNTY, TEXAS

DEFENDANT CITY OF GRAND PRAIRIE'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant City of Grand Prairie, and in response to Plaintiffs' Original Petition for Injunction and Declaratory Judgment ("Plaintiffs' Original Petition"), Defendant respectfully presents the following:

GENERAL DENIAL

I.

Defendant City of Grand Prairie invokes the provisions of Rule 92, Texas Rules of Civil Procedure, and does thereby exercise its legal right to require Plaintiffs to prove all of the allegations contained in their pleadings by a preponderance of the evidence, if they can so prove them, which is denied, and, accordingly, Defendant City of Grand Prairie denies each and every, all and singular, the allegations contained in Plaintiffs' Original Petition, and demands strict proof thereof.

D ORIGINAL

SPECIAL DENIALS

II.

Defendant City of Grand Prairie specifically denies that it is liable to Plaintiffs under the Texas Tort Claims Act, § 101.001, et seq, of the Texas Civil Practice and Remedies Code, under which Plaintiffs must bring their claims, and Defendant City of Grand Prairie is immune from suit and liability.

AFFIRMATIVE DEFENSES

III.

Defendant City of Grand Prairie asserts as an affirmative defense that all of the acts complained of in Plaintiffs' Original Petition are specifically exempted from the application of the waiver of immunity in the Texas Tort Claims Act, under which Plaintiffs must base their claims, and Defendant City of Grand Prairie is immune from liability and suit.

IV.

Defendant City of Grand Prairie furthers assert as an affirmative defense, if same be necessary, that all of the acts complained of in Plaintiffs' Original Petition do not fall within the limited waiver of immunity in the Texas Tort Claims Act, under which Plaintiffs must base their claims, and Defendant City of Grand Prairie is therefore immune from liability and suit.

V.

Defendant City of Grand Prairie further asserts as an affirmative defense, if same be necessary, the affirmative defense of contributory negligence, which proximately caused, in whole in part, the damages of which Plaintiffs complain.

VI.

Defendant affirmatively pleads that its employees did not violate clearly established law of which a reasonable person would have known, and at all times, Defendants' employees' conduct was objectively reasonable.

VII.

Defendant affirmatively pleads that the acts complained of by Plaintiffs were not proximately caused by any constitutionally defective official policy, custom or practice of the City of Grand Prairie.

VIII.

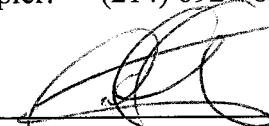
Defendant affirmatively pleads that no act or omission on its part proximately caused any of Plaintiffs' alleged injuries or damages.

Defendant City of Grand Prairie expressly reserves its right to subsequently amend this answer to assert any counterclaims or causes of action it may have against Plaintiffs and/or any additional parties and to aver any affirmative defenses available.

WHEREFORE, PREMISES CONSIDERED, Defendant City of Grand Prairie prays that Plaintiffs take nothing by reason of this suit, and that Defendant City of Grand Prairie go hence without day with its costs, and be granted such other and further relief, both general and special, to which the City may be justly entitled at law or equity.

Respectfully submitted,

WALKER BRIGHT, P.C.
5910 North Central Expressway, Suite 980 .
Dallas, Texas 75206
Telephone: (214) 692-6530
Telecopier: (214) 692-7821

By: 

GERALD BRIGHT
State Bar No. 02991720
DAVID L. CRAFT
State Bar No. 00790522

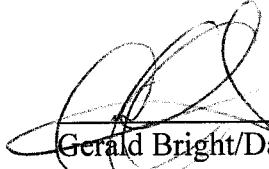
Attorneys for Defendant City of Grand Prairie

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Defendant City of Grand Prairie's Original Answer has been mailed via certified mail, return receipt requested, to counsel or parties of record as listed below on this 19th day of September, 2008.

W. Dean Cook
Cook & Cook Law Offices
740 E. Campbell Road, Suite 900
Richardson, Texas 75081

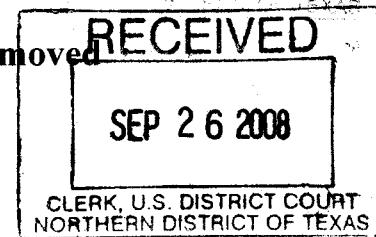
Via CMRRR # 7006 2760 0005 5000 4833


Gerald Bright/David Craft

**United States District Court
Northern District of Texas**

ORIGINAL

**Supplemental Civil Cover Sheet For Cases Removed
From State Court**



This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerks Office. Additional sheets may be used as necessary.

1. State Court Information:

3 - 08 CV 1709 - K

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

<u>Court</u>	<u>Case Number</u>
44 th Judicial District Court of Dallas County, Texas	08-09918

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

<u>Party and Party Type</u>	<u>Attorney(s)</u>
George Battle, Jr, George Battle, III, and Dolly Battle ----- Plaintiffs	W. Dean Cook, Esq Texas Bar No. 24036393 Cook and Cook Law Offices 740 E. Campbell Road, Suite 900 Richardson, Texas 75081 (214) 336-7440
City of Grand Prairie ----- Defendant	Gerald Bright, Esq State Bar No. 02991720 David Craft, Esq State Bar No. 00790522 Walker Bright, PC 5910 N. Central Expressway Suite 980 Dallas, Texas 75206 (214) 692- 6530

Supplemental Civil Cover Sheet
Page 2

3. Jury Demand:

Was a Jury Demand made in State Court? Yes

No

If "Yes," by which party and on what date?

Party

Date

4. Answer:

Was an Answer made in State Court?

No

If "Yes," by which party and on what date?

Defendant

Party

September 22, 2008

Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason(s) for No Service</u>
--------------	---------------------------------

N/A

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

<u>Party</u>	<u>Reason</u>
--------------	---------------

N/A

Supplemental Civil Cover Sheet
Page 3

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
Plaintiffs	42 USC 1983 Article I, Section 19, Texas State Constitution Article I, Section 17, Texas State Constitution